

service, or benefit to members of the other sex.

§ 23.540 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

§ 23.545 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss” or “Mrs.”

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ 23.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§23.500 through 23.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Procedures

§ 23.600 Notice of covered programs.

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the FEDERAL REGISTER a notice of the programs covered by these Title IX regulations. Each such Federal agency

shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.

§ 23.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 38 CFR 18.6 through 18.11.

[65 FR 52890, Aug. 30, 2000]

PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

AUTHORITY: Sec. 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note).

§ 25.1 Uniform relocation

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-255, 42 U.S.C. 4601 note) are set forth in 49 CFR part 24.

[52 FR 48022, Dec. 17, 1987]

PART 26—ENVIRONMENTAL EFFECTS OF THE DEPARTMENT OF VETERANS AFFAIRS (VA) ACTIONS

Sec.

- 26.1 Issuance and purpose.
- 26.2 Applicability and scope.
- 26.3 Definitions.
- 26.4 Policy.
- 26.5 Responsibilities.
- 26.6 Environmental documents.
- 26.7 VA environmental decision making and documents.

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- 26.8 Assistance to applicants.
26.9 Information on and public participation in VA environmental process.

AUTHORITY: 42 U.S.C. 4321–4370a; E.O. 11514, March 5, 1970, as amended by E.O. 11991, May 24, 1977.

SOURCE: 51 FR 37182, Oct. 20, 1986, unless otherwise noted.

§ 26.1 Issuance and purpose.

The purpose of this part is to implement the National Environmental Policy Act (NEPA) of 1969 as amended (42 U.S.C. 4321–4370a), in accordance with regulations promulgated by the Council of Environmental Quality (CEQ Regulations, 40 CFR parts 1500–1508), and Executive Order 11514, March 5, 1970, as amended by Executive Order 11991, May 24, 1977. This part shall provide guidance to officials of the Department of Veterans Affairs (VA) on the application of the NEPA process to Department activities.

(Authority: 42 U.S.C. 4321–4370a)

[51 FR 37182, Oct. 20, 1986, as amended at 54 FR 34987, Aug. 23, 1989]

§ 26.2 Applicability and scope.

This part applies to VA, its administrations and staff offices.

(Authority: 42 U.S.C. 4321–4370a)

[51 FR 37182, Oct. 20, 1986, as amended at 54 FR 34987, Aug. 23, 1989]

§ 26.3 Definitions.

(a) *United States* means all States, territories, and possessions of the United States and all waters and air space subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(b) *VA elements*, for the purposes of this part, means the Veterans Health Services and Research Administration (VHS&RA), the Veterans Benefits Administration (VBA), the National Cemetery Administration (NCS), and the Office of Facilities.

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(c) Other terms used in this part are defined in CEQ Regulations, 40 CFR part 1508.

(Authority: 42 U.S.C. 4321–4370a)

[51 FR 37182, Oct. 20, 1986, as amended at 54 FR 34987, Aug. 23, 1989]

§ 26.4 Policy.

(a) VA must act with care in carrying out its mission of providing services for veterans to ensure it does so consistently with national environmental policies. Specifically, VA shall ensure that all practical means and measures are used to protect, restore, and enhance the quality of the human environment; to avoid or minimize adverse environmental consequences, consistently with other national policy considerations; and to attain the following objectives:

(1) Achieve the fullest possible use of the environment, without degradation, or undesirable and unintended consequences;

(2) Preserve historical, cultural, and natural aspects of our national heritage, while maintaining, where possible, an environment that supports diversity and variety and individual choice;

(3) Achieve a balance between the use and development of resources, within the sustained capacity of the ecological system involved; and,

(4) Enhance the quality of renewable resources while working toward the maximum attainable recycling of non-renewable resources.

(b) VA elements shall:

(1) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the NEPA and CEQ Regulations;

(2) Prepare concise and clear environmental documents which shall be supported by documented environmental analyses;

(3) Integrate the requirements of NEPA with Department planning and decision-making procedures;

(4) Encourage and facilitate involvement by affected agencies, organizations, interest groups and the public in decisions which affect the quality of the human environment; and,

(5) Consider alternatives to the proposed actions which are encompassed by the range of alternatives discussed

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in relevant environmental documents, and described in the environmental impact statement.

(Authority: 42 U.S.C. 4321–4370a)

[51 FR 37182, Oct. 20, 1986, as amended at 54 FR 34987, Aug. 23, 1989]

§ 26.5 Responsibilities.

(a) The Director of the Office of Environmental Affairs shall:

(1) Be responsible to coordinate and provide guidance to VA elements on all environmental matters;

(2) Assist in the preparation of environmental documents by VA elements; and, where more than one VA element, or Federal, State, or local agency is involved, assign the lead VA element or propose the lead Federal, State or local agency to prepare the environmental documents;

(3) Recommend appropriate actions to the Secretary of Veterans Affairs on those environmental matters for which the Secretary of Veterans Affairs has final approval authority;

(4) Assist in resolution of disputes concerning environmental matters within VA, and among VA and other Federal, State and local agencies;

(5) Coordinate preparation of VA comments on draft and final environmental impact statements of other agencies;

(6) Serve as the VA's principal liaison to the CEQ, the Environmental Protection Agency, the Office of Management and Budget, and other Federal, State, and local agencies on VA environmental actions; and

(7) Prepare appropriate supplemental guidance on implementation of these regulations.

(b) VA General Counsel shall provide legal advice and assistance in meeting the requirement of NEPA, the CEQ Regulations and these regulations.

(c) The heads of each VA element shall:

(1) Adopt procedures to ensure that decisions are made in accordance with NEPA, the CEQ Regulations and these regulations; and

(2) Be responsible to prepare environmental documents relating to programs and proposed actions by their

elements, when required by these regulations.

(Authority: 42 U.S.C. 4321–4370a)

§ 26.6 Environmental documents.

(a) *Environmental Impact Statements.* The head of each VA element shall include a detailed written statement “in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.” NEPA 102(2), 42 U.S.C. 4332(2) *see* CEQ Regulations, 40 CFR part 1502. An environmental impact statement shall be prepared in accordance with the following procedures:

(1) *Typical Classes of Action Which Normally Do Require Environmental Impact Statements:* (i) Proposed legislation (CEQ Regulation, 40 CFR 1508.17);

(ii) Acquisition of land in excess of 10 acres for development of a VA medical center facility;

(iii) Acquisition of land in excess of 50 acres for development of a VA national cemetery; and

(iv) Promulgation of policies which substantially alter agency programs and which have a significant effect on the quality of the human environment.

(2) *Specific Criteria for Typical Classes of Action Which Normally Do Require Environmental Impact Statements:* (i) Probable significant degradation of historic or cultural resources, park lands, prime farmlands, designated wetlands or ecologically critical areas;

(ii) An increase in average daily vehicle traffic volume of at least 20 percent on access roads to the site or the major roadway network;

(iii) Probable conflict with Federal, State, or local environmental protection laws or requirements;

(iv) Probable threat or hazard to the public, or the involvement of highly uncertain risks to the environment;

(v) Similarity to previous actions that required an environmental impact statement; and

(vi) Probable conflict with, or significant effect on, local or regional zoning or comprehensive land use plans.

(b) *Categorical Exclusions.* A categorical exclusion is a “category of actions which do not individually or cumulatively have a significant effect on the

human environment and which have been found to have no such effect in procedures adopted by a Federal Agency in implementation of these regulations . . . and for which, therefore, neither an environmental assessment (see subparagraph (c), *infra*) or an environmental impact statement is required.” CEQ Regulations, 40 CFR 1508.4.

(1) Typical classes of action which normally do not require either an Environmental Impact Statement or an Environmental Assessment:

- (i) Repair, replacement, and new installation of primary or secondary electrical distribution systems;
- (ii) Repair, replacement, and new installation of components such as windows, doors, roofs; and site elements such as sidewalks, patios, fences, retaining walls, curbs, water distribution lines, and sewer lines which involve work totally within VA property boundaries;
- (iii) Routine VA grounds and facility maintenance activities;
- (iv) Procurement activities for goods and services for routing facility operations maintenance and support;
- (v) Interior construction or renovation;
- (vi) New construction of 75,000 gross square feet or less;
- (vii) Development of 20 acres of land or less within an existing cemetery, or development on acquired land of five acres or less;
- (viii) Actions which involve support or ancillary appurtenances for normal operation;
- (ix) Leases, licenses, permits, and easements;
- (x) Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances or other similar causes;
- (xi) VA policies, actions and studies which do not significantly affect the quality of the human environment;
- (xii) Preparation of regulations, directives, manuals or other guidance that implement, but do not substantially change, the regulations, directives, manuals, or other guidance of higher organizational levels or another Federal agency; and
- (xiii) Actions, activities, or programs that do not require expenditure of Federal funds.

(2) Specific criteria for typical classes of action which normally do not require either an Environmental Impact Statement or an Environmental Assessment:

- (i) Minimal or no effect on the environment;
 - (ii) No significant change to existing environmental conditions;
 - (iii) No significant cumulative environmental impact; and
 - (iv) Similarity to Actions previously assessed with a finding of no significant impact.
- (3) Extraordinary circumstances that must be considered by a VA element before categorically excluding a particular Department action:
- (i) Greater scope or size than normally experienced for a particular categorical exclusion;
 - (ii) Actions in highly populated or congested areas;
 - (iii) Potential for degradation, although slight, or existing poor environmental conditions;
 - (iv) Use of unproven technology;
 - (v) Potential presence of an endangered species, archeological remains, or other protected resources; or
 - (vi) Potential presence of hazardous or toxic substances.

(c) *Environmental assessments.* If the proposed action is not covered by paragraph (a) or (b) of this section, the responsible official (head of the VA element) will prepare an environmental assessment (CEQ Regulations, 40 CFR 1508.9). Based on the environmental assessment, the official shall determine whether it is necessary to prepare an environmental impact statement, or to prepare a finding of no significant impact (CEQ Regulations, 40 CFR 1508.13).

(1) Typical classes of action which normally do require Environmental Assessments, but not necessarily Environmental Impact Statements:

- (i) Acquisition of land of 10 acres or less for development of a VA medical facility;
 - (ii) Acquisition of land from 5 to 50 acres for development of a VA national cemetery; and,
 - (iii) New construction in excess of 75,000 gross square feet;
- (2) Specific criteria for typical classes of action which normally do require an Environmental Assessment:

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- (i) Potential minor degradation of environmental quality;
- (ii) Potential cumulative impact on environmental quality;
- (iii) Presence of hazardous or toxic substances;
- (iv) Potential violation of pollution abatement laws;
- (v) Potential impact on protected wildlife or vegetation;
- (vi) Potential effects on designated prime farmlands, wetlands, floodplains, or ecologically critical areas;
- (vii) Alteration of stormwater runoff and retention;
- (viii) Potential dislocation of persons or residences;
- (ix) Potential increase of average daily vehicle traffic volume on access roads to the site by 10 percent or more but less than 20 percent, or which alters established traffic patterns in terms of location and direction;
- (x) Potential threat or hazard to the public, or highly uncertain risks to the environment;
- (xi) Potential conflicts with Federal, State, or local environmental protection laws or requirements;
- (xii) Potential conflict with, or significant impact on, official local or regional zoning or comprehensive land use plans; and,
- (xiii) Overloading of public utilities with insufficient capacity to provide reliable service and for average and peak periods.

(Authority: 42 U.S.C. 4321–4370a)

[51 FR 37182, Oct. 20, 1986, as amended at 54 FR 34987, Aug. 23, 1989]

§ 26.7 VA environmental decision making and documents.

(a) Relevant environmental documents shall accompany other decision documents as they proceed through the decision-making process.

(b) The major decision points for VA actions, by which time the necessary environmental documents must be completed, are as follows:

- (1) *Leases*. Prior to execution of lease agreement.
- (2) *Grants*. Prior to notification of grant award.
- (3) *Policy*. Prior to final approval of a policy which substantially alters agency programs and which affects the human environment.

(4) *Legislative proposals*. Included in any recommendation or report to Congress on a legislative proposal which would affect the environment. The document must be available in time for Congressional hearings and deliberations.

(5) *Major, minor, minor miscellaneous delegated projects, and non-recurring maintenance projects*. Prior to contract award for working drawings or prior to in-house initiation of working drawings. If the Secretary of Veterans Affairs or designee makes a finding of compelling need, working drawings may commence prior to completion of the environmental compliance process. However, this will not preclude completion of environmental compliance prior to construction.

(6) *Land acquisition for development*. Prior to the Secretary's acceptance of custody and accountability (for Federal lands), or acceptance of offer to donate or contract for purchase (for private lands).

(c) Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, VA must act in accordance with CEQ Regulations, 40 CFR 1506.11.

(Authority: 42 U.S.C. 4321–4370a)

[51 FR 37182, Oct. 20, 1986, as amended at 54 FR 34987, Aug. 23, 1989]

§ 26.8 Assistance to applicants.

(a) The CEQ Regulations (40 CFR 1501.2(d)) provide for advising of private applicants or other non-Federal groups when VA involvement in a particular action is reasonably foreseeable. Such foreseeable actions involve application to a VA element by private persons, States, and local agencies and pertain primarily to permits, leases, requests for financial assistance, grants, and related actions involving the use of VA real property.

(b) VA involvement may be reasonably foreseeable when the following actions are initiated by non-Federal groups:

- (1) Easements and rights-of-way on VA land;
- (2) Petroleum, grazing, and timber leases;

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(3) Permits, license, and other use agreements or grants of real property for use by non-VA groups; and,

(4) Application for grants-in-aid for acquisition, construction, expansion or improvement of state veterans' health care facilities or cemeteries.

(c) Public notices or other means used to inform or solicit applicants for permits, leases, or related actions will describe the environmental documents, studies or information foreseeably required for later action by VA elements and will advise of the assistance available to applicants by VA element.

(d) When VA owned land is leased or otherwise provided to non-VA groups, VA element affected will initiate the NEPA process pursuant to these regulations.

(e) When VA grant funds are requested by a State agency, VA element affected will initiate the NEPA process and ensure compliance with VA environmental program. The environmental documents prepared by the grant applicant shall assure full compliance with State and local regulations as well as NEPA before the proposed action is approved.

(Authority: 42 U.S.C. 4321-4370a)

§ 26.9 Information on and public participation in VA environmental process.

(a) During the preparation of environmental documents, the responsible VA element shall include the participation of environmental agencies, applicants, State and local governments and the public to the extent practicable and in conformance with CEQ Regulations. Information or status reports on environmental documents shall be provided to interested persons upon request.

(b) Notice of availability or filing requirements vary, depending on the type of environmental documents requested. Specific requirements and procedures are defined for each VA element.

(c) For those actions relating specifically to the Secretary of Veterans Affairs, the Office of Environmental Affairs, or a VA element, information is available by writing to the Director, Office of Environmental Affairs, Department of Veterans Affairs, 810

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Vermont Avenue NW., Washington, DC 20420.

(Authority: 42 U.S.C. 4321-4370a)

PART 36—LOAN GUARANTY

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